

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MARVIN MORAN,

Petitioner,

Case No. 3:21-cv-00050-MMD-WGC

ORDER

**LOVELOCK CORRECTIONAL CENTER
WARDEN, et al.,**

Respondents.

This habeas matter is before the Court on Petitioner Marvin Moran's Motion for Stay and Abeyance (ECF No. 15) and Motion for Enlargement of Time (ECF No. 14). No opposition has been filed to either motion and the deadline to do so has expired. For the reasons discussed below, Petitioner's Motion for Stay and Abeyance is granted and Motion for Enlargement of Time is denied as moot.

Petitioner challenges a conviction and sentence imposed by the Eighth Judicial District Court for Clark County (“state court”). A jury found him guilty of burglary while in possession of a deadly weapon, first degree kidnapping with use of a deadly weapon, and murder with use of a deadly weapon. Petitioner seeks a stay and abeyance to exhaust Grounds 1, 3, 4 and 9. (ECF No. 15.)

Federal courts may not grant a writ of habeas corpus brought by a person in custody pursuant to a state court judgment unless “the applicant has exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A). This exhaustion requirement is “grounded in principles of comity” as it gives states “the first opportunity to address and correct alleged violations of state prisoner’s federal rights.” *Coleman v. Thompson*, 501 U.S. 722, 731 (1991). In general, a federal district court must dismiss an unexhausted petition without prejudice. See *Coleman*, 501 U.S. at 731 (noting that the

1 Supreme Court “has long held that a state prisoner’s federal habeas petition should be
 2 dismissed if the prisoner has not exhausted available state remedies as to any of his
 3 federal claims”); *Castille v. Peoples*, 489 U.S. 346, 349 (1989) (stating habeas petitions
 4 should be dismissed if state remedies have not been exhausted as to any federal claims).

5 A district court is authorized to stay an unexhausted petition in “limited
 6 circumstances,” to allow a petitioner to present unexhausted claims to the state court
 7 without losing his right to federal habeas review due to the relevant one-year statute of
 8 limitations. *Rhines v. Weber*, 544 U.S. 269, 273-75 (2005); *Mena v. Long*, 813 F.3d 907,
 9 912 (9th Cir. 2016) (holding that district courts have authority to stay and hold in
 10 abeyance both mixed petitions and “fully unexhausted petitions under the circumstances
 11 set forth in *Rhines*”). Under the *Rhines* test, “a district court must stay a mixed petition only
 12 if: (1) the petitioner has ‘good cause’ for his failure to exhaust his claims in state court; (2)
 13 the unexhausted claims are potentially meritorious; and (3) there is no indication that the
 14 petitioner intentionally engaged in dilatory litigation tactics.” *Wooten v. Kirkland*, 540 F.3d
 15 1019, 1023 (9th Cir. 2008) (citing *Rhines*, 544 U.S. at 278).

16 The Ninth Circuit has acknowledged that the *Rhines* “good cause” standard does
 17 not require “extraordinary circumstances.” *Wooten*, 540 F.3d at 1024 (citing *Jackson v.*
 18 *Roe*, 425 F.3d 654, 661-62 (9th Cir. 2005)). But courts “must interpret whether a petitioner
 19 has ‘good cause’ for a failure to exhaust in light of the Supreme Court’s instruction
 20 in *Rhines* that the district court should only stay mixed petitions in ‘limited circumstances.’”
 21 *Wooten*, 540 F.3d at 1024 (citing *Jackson*, 425 F.3d at 661). Courts must also “be mindful
 22 that AEDPA aims to encourage the finality of sentences and to encourage petitioners to
 23 exhaust their claims in state court before filing in federal court.” *Wooten*, 540 F.3d at 1024
 24 (citing *Rhines*, 544 U.S. at 276-77).

25 A statement that a habeas petitioner was *pro se* during his state post-conviction
 26 proceedings is sufficient to constitute good cause for failing to exhaust claims. See *Dixon*
 27 *v. Baker*, 847 F.3d 714, 721 (9th Cir. 2017) (citing *Martinez v. Ryan*, 566 U.S. 1, 17
 28 (2012)). “A petitioner who is without counsel in state postconviction proceedings cannot

1 be expected to understand the technical requirements of exhaustion and should not be
2 denied the opportunity to exhaust a potentially meritorious claim simply because he lacked
3 counsel." *Dixon*, 847 F.3d at 721.

4 Petitioner argues that good cause exists because he was reasonably confused and
5 because he did not have counsel in state post-conviction proceedings. (ECF No. 15.) The
6 Court finds that Petitioner has established good cause exists for his failure to exhaust in
7 state court. The Court further finds that the unexhausted grounds are not "plainly
8 meritless," and that Petitioner has not engaged in intentionally dilatory litigation tactics.
9 Accordingly, the Court will grant Petitioner's motion for stay and abeyance.

10 It is therefore ordered that Petitioner Marvin Moran's Motion for Stay and Abeyance
11 (ECF No. 15) is granted.

12 It is further ordered that Petitioner's Motion for Enlargement of Time (ECF No. 14)
13 is denied as moot.

14 It is further ordered that this action is stayed pending exhaustion of the unexhausted
15 claims in the petition for writ of habeas corpus.

16 It is further ordered that the grant of a stay is conditioned upon Petitioner filing, if
17 same is not already pending, a state post-conviction petition or other appropriate
18 proceeding in state district court within 45 days of the date of entry of this order and
19 returning to federal court with a motion to reopen within 45 days of issuance of the
20 remittitur by the Supreme Court of Nevada at the conclusion of all state court
21 proceedings.¹

22 It is further ordered that, with any motion to reopen filed following completion of all
23 state court proceedings pursued, Petitioner: (a) must attach supplemental exhibits
24 containing the new state court pleadings and the state court written decisions thereon; and
25 (b) if Petitioner intends to amend the federal petition, must file a motion for leave to amend

26
27 _____
28 ¹If *certiorari* review will be sought or thereafter is being sought, either party may
move to extend the stay for the duration of such proceedings. Cf. *Lawrence v. Florida*, 549
U.S. 327, 335 (2007).

1 along with the proposed verified amended petition or a motion for extension of time to
2 move for leave.

3 The Clerk of Court is directed to administratively close this action until such time as
4 the Court grants a motion to reopen the matter.

5 It is further ordered that the Court will reset the briefing schedule upon reopening
6 the case and lifting the stay. No claims are dismissed by this order, and a reopened action
7 will proceed under the same docket number.

8 It is further ordered that Respondents' Motion to Dismiss (ECF No. 8) is denied
9 without prejudice to the reassertion of any and all defenses then applicable following the
10 stay, following upon a scheduling order directing a response.

11 DATED THIS 20th Day of October 2021.

12
13
14 MIRANDA M. DU
15 CHIEF UNITED STATES DISTRICT JUDGE
16
17
18
19
20
21
22
23
24
25
26
27
28


